(2) "That you on May 3, 1975 at about 3.30 p.m. at No. 27/A, Jalan 52/1 (Butterfly Hair Dressing Saloon), Petaling Jaya, in the State of Selangor, with one another (now in custody), in furtherance of the common intention of all, robbed one Loo Suan Tee of cash $400 and four gold chains valued at $1,100 and at the time of committing the said robbery used deadly weapons, to wit, one Firearm and one Bearing Scraper, and that you have thereby committed an offence punishable under section 392 of the Penal Code read with sections 34 and 397 of the Penal Code."

(3) "That you on May 5, 1975 at about 3.10 p.m. at No. 164, Jalan Chan Sow Lin, in the City of Kuala Lumpur, with one another (now in custody), in furtherance of the common intention of all, robbed one Ng Koon Leong of cash $9,000 and at the time of committing the said robbery used deadly weapons, to wit, One Revolver and One Dagger, and that you have thereby committed an offence punishable under section 392 of the Penal Code read with sections 34 and 397 of the Penal Code."

and

(4) That you on May 20, 1975 at about 8.50 p.m. at No. 106, Jalan Bandar (Singapore Hair Dressing Saloon) in the City of Kuala Lumpur, with one another now in custody, in furtherance of the common intention of all, robbed one Yap Thoong Chean and others of one .32 Walther Automatic Pistol with six rounds of ammunition, One Rolex Watch valued at $5,200, One Diamond Ring valued at $2,800, One Gold Chain valued at $800, cash $1,400 and another gold chain valued at $100, and at the time of committing the said robbery used a deadly weapon, to wit, a firearm, and that you have thereby committed an offence punishable under section 392 of the Penal Code read with sections 34 and 397 of the Penal Code."

On conviction, the learned president sentenced the appellant to seven years' imprisonment on each charge with three strokes of the rotan, the imprisonment sentences to run consecutively. It is against these sentences that the appellant now appeals. Encik Lall Harcharan Singh counsel for the appellant has urged the court to consider certain mitigating factors and also to order that the sentences to run concurrently instead of consecutively. On the other hand, the learned deputy public prosecutor has stressed the gravity of the offences committed and has submitted that, in this case, there is no question of repentance.

Insofar as this court is concerned, in exercise of its appellate jurisdiction, it shall consider whether the sentences of the court below were wrong in law or were they manifestly excessive on the facts and circumstances justifying interference. It is settled law that sentences should not be interfered with by the appellate court merely because the individual presiding in the higher court might, having personal views on the matter, have passed a different sentence.

Our system, as practised today, has vested the magistrates and presidents with wide discretionary power in the matter of the amount of punishment. Such discretionary power must not, however, be exercised in complete disregard of the facts and circumstances of the case. In point of fact, the discretion must be exercised judicially. Now, in consideration of what I have said, the court should not therefore interfere with the lower court's discretion unless there is apparent on the fact of the record a manifest error either in law, or, in considering the facts and circumstances of the case. The nature of the offences committed in particular that which is violent in nature and one that involves the security of life and property, must necessarily be viewed gravely.

Robbery, especially one in the commission of which deadly weapon or weapons are used is a crime which not only involves disastrous consequences to others but afford evidence of the odious qualities of the person who commits it. Crimes involving great moral atrocity as well as great public mischief should be met with deterrent sentences.

In the instant case, the learned president quite rightly considered not only the nature and gravity of the offences committed by the appellant but also the facts and circumstances surrounding the case. The learned president, also considered what is common knowledge namely the fact that there has been an increase of crime in Kuala Lumpur.

On the facts, I am unable to say that, by ordering the imprisonment sentences to run consecutively, there is a manifest error of law or that the sentences were, in the circumstances, manifestly excessive.

For these reasons, I hereby dismiss the appeal.

Appeal dismissed.

Solicitors: *L. H. Singh & Co.*

RE NGAN KIM YONG

[O.C.J. (Abdoolcader J.) March 31, 1975]
[Ipoh — In Bankruptcy No. 3 of 1971]

Bankruptcy — Caveats against properties — Withdrawal — Bankruptcy Act, 1967, s. 85(3).

The bankrupt and one *S* were partners of a firm. The bankrupt sued *S* for accounts of the partnership. He then entered private caveats upon the titles of properties belonging to *S*. A receiving order was made against the partnership and an adjudication order were made against the bankrupt and *S*. The Official Assignee in the bankruptcy of *S* asked for leave to withdraw the caveats.

Held: (1) in view of the bankruptcy of *S* the bankrupt no longer had any remedy against any properties belonging to *S*, the other bankrupt partner;

(2) the bankrupt would only be able to claim by lodging a proof of debt in the bankruptcy of *S*.

[Editorial Note: An appeal in this case (Federal Court Civil Appeal No. 33 of 1975) was dismissed by the Federal Court on February 2, 1976.]

BANKRUPTCY.

Lee Yee Kuang for the Official Assignee.

Abdul Rahim Noor (*Lim Cho Hock* with him) for the judgment-debtor.

Abdoolcader J.: The Official Assignee applied under the provisions of section 85(3) of the Bankruptcy Act, 1967, for directions in relation to the withdrawal of private caveats lodged by the bankrupt against certain pieces of land registered in the name of and belonging to another bankrupt who is her partner in a firm known as Eastern Building Company.

The facts pertaining to this application are fully set out in the application of the Official Assignee, and I need only state briefly that the bankrupt and one Sit Yu Yoong were partners in a firm of housing developers styled Eastern Building Company, and in an action instituted by Sit Yu Yoong against the

bankrupt in Ipoh High Court Civil Suit No. 296 of 1966 an Order was made on April 1, 1968, confirming the partnership and ordering accounts to be taken of all partnership dealings between Sit Yu Yoong and the bankrupt. The bankrupt then in 1969 and 1970 entered private caveats upon the titles to several pieces of land belonging to Sit Yu Yoong which are specified in the application before me. On August 27, 1973, a Receiving Order was made against the firm of Eastern Building Company and an adjudication order made against Sit Yu Yoong. Receiving and Adjudication Orders had also been made against the bankrupt as a partner of the firm on May 25, 1973, in the same application.

Some of the lands in question are subject to charges executed by Sit Yu Yoong in favour of Chung Khiaw Bank Ltd., and these are the subject matter of an application by the bank for an order of sale in Ipoh High Court Originating Summons No. 481 of 1971. There are several intervenors in those proceedings and their efforts to come to an amicable settlement with the bank have been impeded by the private caveats lodged by the bankrupt.

It is clear that in view of the bankruptcy of Sit Yu Yoong the bankrupt no longer has any remedy against any properties belonging to her bankrupt partner, and if ultimately any moneys are in fact found due to the bankrupt from Sit Yu Yoong on accounts taken pursuant to the order of April 1, 1968, the bankrupt would only be able to claim in the bankruptcy of Sit Yu Yoong by lodging a proof of debt. She would have no enforceable right against the caveated properties.

When the application was heard in chambers before me, Mr. Rahim Noor, appearing for the bankrupt, agreed that the bankrupt has no right against the caveated properties but stated that she had deposited a sum of $30,000 with her solicitors which she wished to apply to pay off the creditors in both bankruptcies in order to deal with the caveated properties. I allowed an application for further argument in open court entirely out of curiosity as to what further points could be taken on behalf of the bankrupt in view of the concession made that she had in fact no right against the lands in question.

On further argument, Mr. Lim Cho Hock, appearing for the bankrupt, submitted that there was an Order made in Civil Suit No. 296 of 1966 on December 16, 1969, extending the period of the private caveats lodged by her and ordering them to remain in force until the disposal of the enquiry into the accounts of the partnership and satisfaction of any sum found due to the bankrupt. Mr. Lim Cho Hock also then agreed that the bankrupt has no right against the caveated properties. The short answer to the point raised about the Order of December 16, 1969, which I have referred to is that the bankruptcy of Sit Yu Yoong has radically changed the position, resulting in the bankrupt having no right against the caveated properties, and it is furthermore open to the Official Assignee, who has stepped into the shoes of the bankrupt by virtue of her bankruptcy, to ask for a withdrawal of the caveats in the circumstances, as indeed it would be open to her to do at any time notwithstanding the Order of December 16, 1969.

In the circumstances and in view of the bankruptcy of Sit Yu Yoong, it is abundantly clear that the bankrupt no longer has any remedy against the property of Sit Yu Yoong and her only recourse in the event of any claim against her bankrupt partner would be to join the general pool of unsecured creditors in the bankruptcy of Sit Yu Yoong. I found therefore no merit at all in her objection, and confirmed my Order made in Chambers that the Official Assignee be at liberty to withdraw the private caveats lodged by the bankrupt against the lands registered in the name of and belonging to Sit Yu Yoong.

Order accordingly.

Solicitors: *Maxwell, Kenion, Cowdy & Jones.*

MALAYAN PINEAPPLE COMPANY SDN. BHD. v. FOOD INDUSTRY EMPLOYEES UNION

[O.C.J. (Mohamed Azmi J.) November 8, 1975]

[Kuala Lumpur — Originating Motion No. 64 of 1974]

Administrative Law — Certiorari — Application for Order of Certiorari to quash award of Industrial Court — Applicant claimed that award was wrong in law, and Industrial Court had, in making the award, acted in excess of its jurisdiction — Employment Ordinance, 1955 s. 60G — Industrial Relations Act, No. 35 of 1967, ss. 26 and 27(5) & (6).

The applicant had terminated the services of their employees (hereinafter called the claimants) on the ground that the company had been running at a loss. However, it did not make any redundancy payments to the claimants. The Industrial Court considered the provision of section 60G of the Employment Ordinance 1955 and came to the conclusion that all the claimants were entitled to retrenchment benefits except those who had been in continuous service with the company for less than three years. The court also held that the applicant company was in a financial position to make redundancy payments and awarded payment to those who had worked for three years and over.

The applicant submitted that the said award was wrong in law on the ground that the Industrial Court had no power under section 60G of the Employment Ordinance to award retrenchment benefits, and therefore it had acted in excess of its jurisdiction.

Held, dismissing the application: (1) as section 60G of the Employment Ordinance provided for the qualification period for making retrenchment benefit, it followed that those who qualify must have a legal right to such benefit;

(2) the Industrial Court was entitled to make an award for the settlement of any differences or disputes arising from the relationship between an employer and workmen and their trade unions, even if there was no express obligation on the part of the employer to make the payment as awarded, subject only to the qualification that such award was not prohibited by the provision of any statutory law;

(3) the Industrial Court had not acted in excess of its jurisdiction in ordering that the claimants be paid retrenchment benefits.

ORIGINATING MOTION

S. Kulasegaran for the applicant.

D. Puthucheary for the respondent.

Mohamed Azmi J.: This is an application by Notice of Motion by the Malayan Pineapple Company Sendirian Berhad, Klang, for an Order of *Certiorari* to remove into this court for the purpose of quashing the award dated June 18, 1974 made by the Industrial Court *vide* Industrial Court Case No. 17 of 1974 on the following grounds: —